

ROGER RUSS
FOUR-LOT MINOR SUBDIVISION AND ONE VARIANCE REQUEST
STAFF REPORT FOR PLANNING BOARD

CASE PLANNER:

Tristan Riddell *TR*

**REVIEWED/
APPROVED BY:**

Renee Van Hoven *RV*

PUBLIC MEETING:

Planning Board Public Hearing:	September 6, 2006
Deadline for recommendation to BCC:	October 4, 2006
BCC public meeting (tentative):	9:00am October 12, 2006
Deadline for BCC action (35 working days):	October 25, 2006

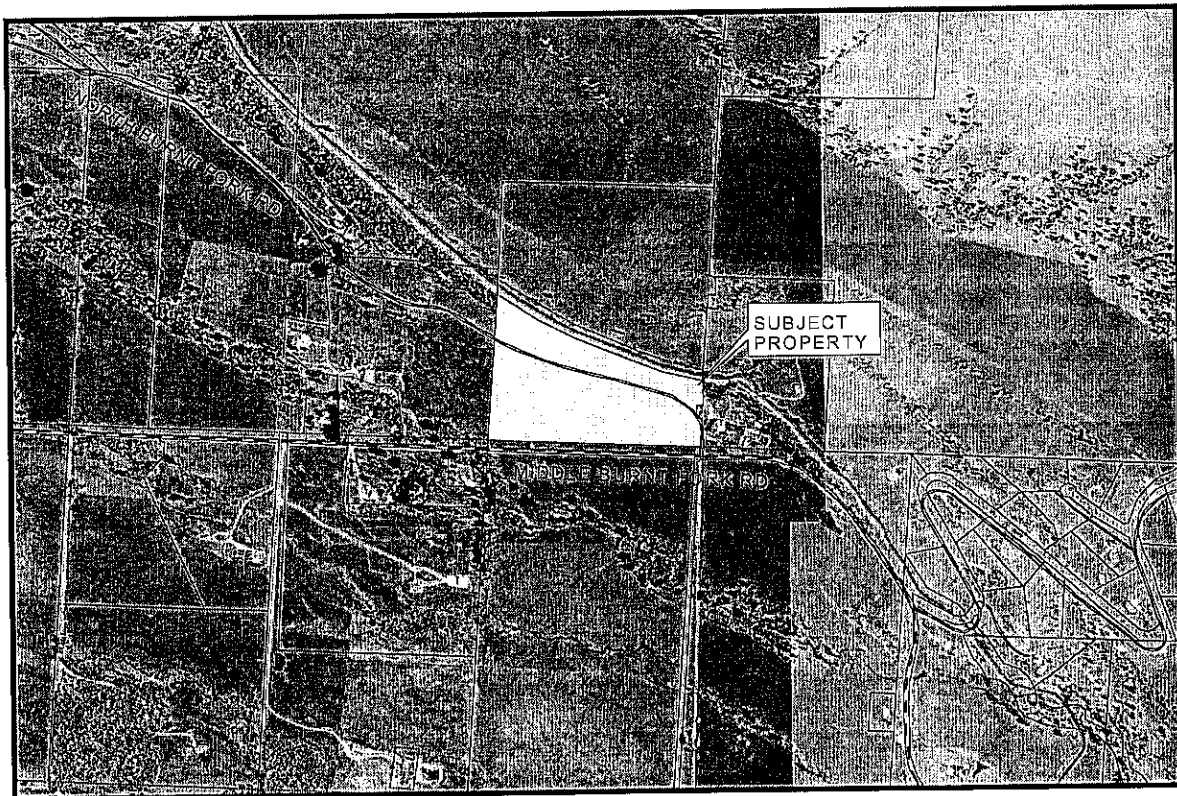
APPLICANT OWNER:

Roger Russ
131 Holland Road
Lopez Island, WA 98261

REPRESENTATIVE:

Professional Consultants, Inc., William Burnett
1713 N. 1st Street
Hamilton, MT 59840

LOCATION OF REQUEST: The property is located east of Stevensville at the intersection of North Burnt Fork Road and Middle Burnt Fork Road. (Map 1)



Map 1: Location Map
(Data Source: Ravalli County Planning Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Tract B, certificate of survey 516643 located in the SE1/4 of Section 29, T9N, R19W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision and variance applications were determined complete on August 2, 2006. Agencies were notified of the subdivision and variance request and comments received by the Planning Department that are not in the application are Exhibits A-1 through A-4 of the staff report.

LEGAL NOTIFICATION:

A legal advertisement was published in the Ravalli Republic on Tuesday, August 22, 2006. Notice of the project was posted on the property and adjacent landowners were notified by certified mail postmarked August 17, 2006. No public comments have been received to date.

**DEVELOPMENT
PATTERN:**

Subject property	Open
North	Agricultural
South	Agricultural
East	Agricultural and Residential
West	Agricultural

RAVALLI COUNTY PLANNING BOARD

SEPTEMBER 6, 2006

ROGER RUSS
FOUR-LOT MINOR SUBDIVISION AND VARIANCE REQUEST

RECOMMENDED MOTION

1. That the variance request from Section 5-2-2(c)(6) be **denied**, based on the findings of fact and conclusions of law in the staff report.
2. That the Roger Russ Minor Subdivision be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR THE SUBDIVISION

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments listed below shall be included in the submittal of the final plat to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. *(Effects on Agriculture)*

Notification of Severe Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as severe for road construction and building sites. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question which are included as exhibits to this document (the applicant shall include the exhibits as attachments). *(Effects on Public Health and Safety)*

Notification of Irrigation Ditch/Pipeline Easements. Within this subdivision there are irrigation easements. All downstream water right holders have the right to maintain and repair their ditches/pipelines and diversion structures whenever necessary to keep them in good condition. The filed subdivision plat shows irrigation easements on the property. All downstream users must approve any relocation or alteration (i.e. installation of a culvert) of an irrigation ditch or pipeline. Any act which damages or destroys a ditch/pipeline, interferes with its operation or maintenance in any way, or restricts access to the ditch/pipeline so as to interfere with its maintenance is expressly prohibited. The downstream water right holders have the right to use the easement to maintain the ditch or pipeline. *(Effects on Agricultural Water User Facilities)*

Notification of No-Build/Alteration Zone. Within this subdivision there is a no-build/alteration zone on Lots 2 and 3, as shown on the plat, to restrict building within 500 feet of the ordinary high water mark North Burnt Fork Creek. There is also a no-build/alteration zone on the slopes greater than 25% on Lot 4. No new structure, with the exception of fences, may be constructed in this area. *(Effects on Natural Environment, Wildlife and Wildlife Habitat, and Public Health and Safety)*

Notification of Proximity to North Burnt Fork Creek. This subdivision is located in close proximity to North Burnt Fork Creek. There is an inherent hazard associated with creeks, due to potential soil erosion, flooding and movement of the creek channel. It is recommended that property owners of this subdivision obtain flood insurance. *(Effects on Public Health and Safety)*

Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal subdivision road and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for the internal road was filed with this subdivision and outlines what parties are responsible for road maintenance and under what conditions. *(Effects on Local Services)*

Limitation of Access onto a County Road. A "no ingress/egress" restriction is located along the Middle Burnt Fork Creek Road and North Burnt Fork Creek Road frontages of the subdivision, excepting the approaches, as approved by the Ravalli County Road and Bridge Department, which precludes vehicular access onto this County-maintained road. This limitation of access may be lifted or amended with approval of the County. *(Effects on Local Services & Effects on Public Health and Safety)*

2. Protective covenants for this subdivision shall be submitted with the final plat that include the following provisions:

Living with Wildlife. (See Exhibit A-1 for required provisions.) *(Effects on Agriculture and Wildlife and Wildlife Habitat)*

Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community waste water treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. *(Effects on Local Services)*

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light is emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). *(Effects on Natural Environment)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. *(Effects on Public Health and Safety)*

Flood Hazard Zone for Burnt Fork Creek. All structures within this subdivision shall be built with a first floor elevation at least 2 feet above the existing grade. *(Effects on Public Health and Safety)*

Amendment. The covenants filed with the final plat shall state that written governing body approval shall be required for amendments to provisions of the covenants listed above, that are required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. The subdividers shall include an RSID/SID waiver in a notarized document filed with subdivision plat that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services)*
4. The applicants shall provide evidence that a financial contribution (to be decided by the Planning Board) has been contributed to the Stevensville School District prior to final plat approval. *(Effects on Local Services)*
5. The applicant shall provide a letter from the Stevensville Rural Fire District stating that they have provided the required 1,000 gallons per minute water supply or 2,500 gallons per lot water storage for fire protection for each lot within this subdivision. Alternatively, the applicant may provide evidence of a \$500 contribution made to the Stevensville Rural Fire District with the final plat submittal in lieu of the required water supply or water storage for fire protection. *(Effects on Local Services & Effects on Public Health and Safety)*
6. The subdivider shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision. *(Effects on Public Health and Safety)*
7. The final plat shall show a no ingress/egress zone along the Middle Burnt Fork Road and North Burnt Fork Road frontages of the subdivision, excepting the approaches, as approved by the Road and Bridge Department. *(Effects on Local Services & Effects on Public Health and Safety)*
8. A stop sign and road name sign shall be installed for the internal road in conjunction with the Road and Bridge Department. *(Effects on Local Services and Public Health and Safety)*
9. All irrigation easements shall be shown on the final plat. *(Effects on Agricultural Water User Facilities)*
10. A Master Irrigation Plan that meets the requirements of Section 3-2-15 of the Ravalli County Subdivision Regulations, which would include a plat sized plan and the irrigation agreement, shall be submitted before final plat approval. *(Effects on Agricultural Water User Facilities)*
11. A no-build/alteration zone extending 500 feet from the ordinary high water mark of North Burnt Fork Creek shall be shown on the final plat. A no-build/alteration zone shall also be shown on the slopes greater than 25% on the final plat, as shown on the preliminary plat. *(Effects on the Natural Environment and Public Health and Safety)*
12. The notification of a flood hazard zone as shown on the preliminary plat shall be placed on the final plat. *(Effects on Public Health and Safety)*
13. The internal road easement shall be labeled as a public road and utility easement on the final plat. *(Effects on Local Services)*

INTRODUCTION

Roger Russ is a four-lot minor subdivision proposed on 22.85 acres. The property is located approximately 4 miles east of Stevensville at the intersection of Middle Burnt Fork Road and North Burnt Fork Road. It is located in the Stevensville School District and the Stevensville Rural Fire District. The parcel is currently vacant. North Burnt Fork Creek is located approximately 100 feet southwest of the property.

In conjunction with the subdivision proposal, the applicant is requesting a variance from Section 5-2-2(c)(6), which requires that all lots are served off an internal road.

Staff is recommending conditional approval of the subdivision and denial of the variance request.

SUBDIVISION REPORT

COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. According to the application, the property is not currently being used for agriculture.
2. There are no Prime Farmland Soils or Farmland of Statewide Importance associated with this property.
3. The property is located in an area where there is a mix of agricultural and residential uses. To mitigate impacts on nearby agricultural practices, a notification of agricultural operations shall be filed with the final plat and the covenants shall include a provision requiring owners to control domestic pets. (*Conditions 1 & 2 – in Living with Wildlife section*)

Conclusion of Law:

With the mitigating conditions, impacts of this subdivision on surrounding agricultural practices will be minimized.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. The application states there are water rights associated with this property and the applicant is proposing to divide the rights among the proposed lots. There are two existing irrigation ditches traversing the property that will provide Lots 1 through 3 with access to irrigation. The southernmost ditch has an existing 20-foot wide easement and the applicant has proposed a 20-foot wide easement for the ditch traversing the middle of the property.
2. A preliminary Irrigation Agreement and Plan are included in the application. To mitigate impacts on agricultural water user facilities, the applicant shall show existing and proposed irrigation easements centered on the two irrigation ditches, as shown on the preliminary plat, on the final plat. To further mitigate impacts on agricultural water user facilities a Master Irrigation Plan meeting the requirements of Section 3-2-15 of the Ravalli County Subdivision Regulations (RCSR), which would include the plat-sized plan and the irrigation agreement, shall be submitted prior to final plat approval. (*Conditions 9 & 10*)
3. To notify future property owners and mitigate potential impacts on agricultural water user facilities, a notification of the irrigation ditches and easements shall be filed with the final plat. (*Condition 1*)
4. A 60-foot wide private road and utility easement is located within Lot 4. This easement is used by BRID to access the BRID Canal for maintenance. Because of the easement and slopes greater than 25%, Lot 4 is proposed to be a utility lot. According to Section 5-2-2(b)(2) of the RCSR, a lot not intended as a buildable lot, is allowed, provided the permitted use is designated on the face of the final plat, which is a requirement of final plat approval. A permanent deed restriction is also required, but because the lots won't be created until final plat approval, this requirement cannot be met.

Conclusion of Law:

Impacts to agricultural water user facilities will be minimized through the mitigating condition and requirements of final plat approval.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

1. The applicant is required to pay the pro-rata share of the cost to improve the substandard portions of North Burnt Fork Road and Middle Burnt Fork Road that lead to the subdivision from Eastside Highway.
2. A portion of North Burnt Fork Road is within the subdivision and is subject to Section 5-4-5(b)(2), which requires that roads serving three to five lots are improved to meet county standards. The applicant will be required to improve the portion of North Burnt Fork Road within the subdivision unless a variance is requested.
3. Section 5-2-2(c)(6) of the RCSR requires that all lots within the subdivision are served off an internal road. The applicant has requested a variance and is proposing individual driveways and the existing access used by BRID off North Burnt Fork Road to serve Lots 1, 3 and 4 and a driveway off Middle Burnt Fork to serve Lot 2.
4. Since North Burnt Fork Road is within the subdivision, Lots 1, 3, and 4 are served off an internal road. Lot 2 is not served from an internal road. Staff is recommending denial of the variance, so that Lot 2 is accessed by an internal subdivision road. To limit access onto Middle Burnt Fork Road and North Burnt Fork Road and to mitigate impacts on local services, the final plat shall show a non ingress/egress zone along both road frontages, excepting the approaches, as approved by the Ravalli County Road and Bridge Department. A notification of this limitation of access shall also be included in the Notifications Document. (*Conditions 1 & 7*)
5. With the denial of the variance, road and grading and drainage plans approved by the Ravalli County Road and Bridge Department are required so that Lot 2 is accessed by an internal road. Unless a road design layout is provided by the end of the public hearing, the road plans may be considered new information by the Board of County Commissioners pursuant to MCA 76-3-615(2)(b), which requires a subsequent public hearing.
6. With denial of the variance request, a road maintenance agreement for the internal road will be required. To mitigate impacts on local services, notification of the Road Maintenance Agreement for the internal road shall be filed with the Notifications Document. (*Condition 1*)
7. To mitigate impacts on local services, the internal road shall be labeled as a public road and utility easement. (*Condition 13*)
8. To mitigate impacts on local services and public health and safety, a stop sign and road name sign shall be installed at the intersection of the internal road and North Burnt Fork Road or Middle Burnt Fork Road prior to final plat approval. (*Condition 8*)
9. A General Discharge Permit for stormwater associated with the construction activities from the Montana Department of Environmental Quality (if required), an approach permit approved by the RCRBD, a road name petition approved by the Ravalli County GIS Department, final road plans approved by the RCRBD, and engineer certification that the internal road meets county standards are required to be submitted prior to final plat approval.
10. Individual wells and septic systems are proposed to serve the lots. (*See Natural Environment*)
11. To mitigate potential impacts of this subdivision on any possible future public water, sewer system, or improvements to the road system, the RSID/SID waiver filed with the final plat shall address these services/facilities. (*Conditions 2 & 3*)
12. Bitterroot Disposal provides service to this site.
13. The applicants stated they are willing to make a contribution to the Stevensville School District, but did not specify an amount. (*Condition 4*)
14. In a letter dated August 17, 2006, the Stevensville School District stated that they district could handle the additional potential increase in school aged children caused by the subdivision. (*Exhibit A-2*)
15. The Stevensville Rural Fire District has not provided comments, but usually recommends that the applicant provide the water supply requirements adopted under the Uniform Fire Code or a \$500 per lot contribution, which will mitigate impacts on local services and public health and safety. (*Condition 5*)

16. Adequate public services are available to the subdivision.
17. The Ravalli County Sheriff's Office provides law enforcement services to this area.

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, impacts of the subdivision on local services will be mitigated.

CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT

Findings of Fact:

1. The property is located approximately 100 feet northeast of North Burnt Fork Creek, which drains an area of 15 square miles or more. The property is separated from North Burnt Fork Creek by Middle Burnt Fork Road, so a floodplain analysis waiver was granted by the Ravalli County Floodplain Administrator. (Application)
2. To mitigate impacts on the natural environment, specifically North Burnt Fork Creek, a no-build/alteration zone shall be shown on the final plat on Lots 2 and 3, as shown on the preliminary plat. The no build/ no alteration zone should extend horizontally 500 feet from the ordinary high water mark of North Burnt Fork Creek. (*Condition 11*) To mitigate impacts on the natural environment, a notification of the no build/no alteration zone shall be included with the Notifications Document. (*Condition 1*)
3. Individual wells and wastewater treatment systems are proposed to serve the lots within the subdivision and adequate information has been provided to the Environmental Health Department for local subdivision review to occur. (*Exhibit A-3*) A Certificate of Subdivision Plat Approval from Montana DEQ is required to be submitted with the final plat.
4. To mitigate air pollution resulting from home heating emissions, protective covenants shall be filed with the final plat stating that the primary heat source for any newly constructed residences must be at least 75% efficient. (*Condition 2*)
5. An approved noxious weed and vegetation control plan is required to be filed with the final plat. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board (*Condition 2*).

Conclusion of Law:

Impacts from this subdivision on the natural environment will be minimized with the requirements of final plat approval and imposition of mitigating conditions.

CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. The property is not located within the Montana Fish, Wildlife, and Parks (FWP) identified big game winter range and there are no species of special concern listed in the vicinity of the property.
2. FWP requested that living with wildlife provisions be included in the covenants to mitigate impacts on wildlife and wildlife habitat. (*Exhibit A-1*) (*Condition 2*)
3. To mitigate impacts on the natural environment, specifically North Burnt Fork Creek, a no-build/alteration zone shall be shown on the final plat on Lots 2 and 3, as shown on the preliminary plat. The no build/ no alteration zone should extend horizontally 500 feet from the ordinary high water mark of North Burnt Fork Creek. (*Condition 11*)
4. To mitigate impacts on the natural environment, a notification of the no build/no alteration zone shall be included with the Notifications Document. (*Condition 1*)

Conclusion of Law:

With the condition of approval, the proposed subdivision will likely have a minimal impact on wildlife.

CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

1. The applicant is requesting a variance from the requirement that all lots are served off an internal road and is instead proposing an individual access for Lot 2. (Variance) The Road Department and Board of County Commissioners have generally preferred fewer accesses onto County-maintained roads and staff is recommending denial of the variance.
2. The preliminary plat and soil map indicates there are soil types on the property that are considered severe for construction of roads and/or buildings. To mitigate potential impacts on public health and safety, a notification of severe soils shall be in the Notifications Document filed with the final plat. (*Condition 1*)
3. The subject property is located within the designated Burnt Fork Creek 100 year alluvial fan flood hazard zone as determined by the U.S. Army Corps of Engineers for Montana DNRC. To mitigate any detrimental effects associated with construction in the flood hazard zone, the applicant shall place a notification on the final plat that all structures within the subdivision shall be built with their first floor elevation at 2 feet above the existing grade, as shown on the preliminary plat and a provision regarding the restriction shall be included in the covenants. (*Conditions 2 & 12*)
4. To mitigate impacts of public health and safety, specifically dealing with North Burnt Fork Creek, a notification of proximity to North Burnt Fork Creek shall be included in the Notifications Document. (*Condition 1*)
5. To mitigate impacts on the natural environment, specifically North Burnt Fork Creek, a no-build/alteration zone shall be shown on the final plat on Lots 2 and 3, as shown on the preliminary plat. The no build/ no alteration zone should extend horizontally 500 feet from the ordinary high water mark of North Burnt Fork Creek. A notification of the no-build/alteration zone within 500 feet of the ordinary high water mark of North Burnt Fork Creek shall be included with the Notifications Document. (*Conditions 1 & 9*)
6. To mitigate impacts on public health and safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (*Condition 6*)
7. Lot 4 has slopes greater than 25% and the applicant is proposing a no-build/alteration zone on the steep slopes. Because of the slopes and a road and utility easement for BRID, the lot is not buildable and is proposed for utility use only. According to Section 5-2-2(b)(2) of the RCSR, a lot not intended as a buildable lot, is allowed, provided the permitted use is designated on the face of the final plat, which is a requirement of final plat approval. A permanent deed restriction is also required, but because the lots won't be created until final plat approval, this requirement cannot be met.
8. The proposed subdivision is located within the Stevensville Rural Fire District and with Condition 5 impacts to the District will have been addressed.
9. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (*Condition 2*)
10. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants shall include a statement regarding radon exposure. (*Condition 2*)
11. With the conditions and requirements of final plat approval, access to the subdivision will be adequate for public health and safety. (*Effects on Local Services and Conditions 1 & 7*)

Conclusion of Law:

The mitigating conditions and requirements of final plat approval will address impacts on public health and safety.

COMPLIANCE WITH:

1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Finding of Fact:

Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

CONSISTENCY WITH EXISTING ZONING AND COVENANTS

Findings of Fact:

1. There is no existing zoning on the property.
2. There are no existing covenants on the property.

Conclusions of Law:

The property has no zoning or covenants.

PROVISION OF EASEMENTS FOR UTILITIES

Finding of Fact:

The proposed subdivision will be served by Ravalli Electric Cooperative and Qwest Telephone. Utility certificates are a requirement of final plat approval.

Conclusion of Law:

Utility services will be available to this subdivision.

PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

Physical and legal access for this subdivision is proposed via Middle Burnt Fork Road and North Burnt Fork Road, both of which are County-maintained roads. (*Local Services*)

Conclusion of Law:

With the conditions of approval and requirements of final plat approval, the proposal meets physical and legal access requirements.

VARIANCE REPORT

VARIANCE REQUEST

The applicant has requested a variance from Section 5-2-2(c)(6) of the Ravalli County Subdivision Regulations to allow the lots to access directly off Middle Burnt Fork Road and North Burnt Fork Road instead of an internal subdivision road.

North Burnt Fork Road runs through the subdivision. North Burnt Fork Road is county maintained, has a 60 foot wide easement, and has a gravel travel surface. North Burnt Fork Road is to be considered a road internal to the subdivision. The current configuration of the lots prohibits Lot 1 from accessing the internal road.

Compliance with Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. Section 5-2-2(c)(6) requires lots within this subdivision to access off an internal road if the road in which the lot fronts is a minor collector or higher. Middle Burnt Fork Road is classified as a minor collector.
2. In an email date August 31, 2006 (Exhibit A-4), the Ravalli County Road and Bridge Department recommended denial of the variance request based on the fact that private roadways should access the county roadway with a lesser functional classification. In this situation, access onto Middle Burnt Fork Road, with nearly 3 times as much traffic as North Burnt Fork Road, may compromise public health and safety. Middle Burnt Fork is functionally classified as a Minor Collector roadway with an ADT of 1148 and North Burnt Fork Road is functionally classified as a Minor Local Access roadway with an ADT of 435 (2003).
3. With the construction of an internal road to access Lots 1, 2, and 3 the number of accesses onto county maintained roads will be reduced.

Conclusion of Law:

There will be negative impacts to public health and safety by granting this variance due to the increase in accesses onto Middle Burnt Fork Road.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Finding of Fact:

The property is accessed by two County-maintained roads. An internal road could be constructed off either road.

Conclusion of Law:

The conditions upon which the variance is requested are not unique to the subject property.

C. Physical conditions, such as topography or parcel shape, prevents the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

Neither topography or parcel shape play a role in determining the applicants ability to construct an internal road.

Conclusion of Law:

Physical and topographic conditions do not prohibit the applicant from constructing an internal road.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. There is no zoning on this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

- Additional accesses on Middle Burnt Fork Road may result in more traffic accidents. There may be costs associated with the traffic accidents through providing emergency services.

Countywide Policy 4.2: Consider the cumulative impacts of development.

- More accesses onto Middle Burnt Fork Road will add to traffic and may create negative impacts to public health and safety.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The developer is responsible for providing an internal road from which all lots in the subdivision are accessed. An internal road would create fewer impacts to the road system, which would contribute to the maintenance of the existing infrastructure.

Conclusions of Law:

1. Zoning does not apply to this property.
2. The Growth Policy does not support the granting of this variance.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

An individual access onto Middle Burnt Fork Road would increase the impacts to the current road system. An increase in the impacts to the road system results in increased public costs.

Conclusion of Law:

Approval of the variance request will affect public costs.



**Montana Fish,
Wildlife & Parks**

EXHIBIT A-1

Region 2 Office
3201 Spurgin Road
Missoula, MT 59804-3099
406-542-5500
September 20, 2005

Becky Weaver
Professional Consultants, Inc.
PO Box 1750
Missoula, MT 59806-1750

Dear Ms. Weaver:

Reference: Roger Russ--Proposed minor (3 lots on 22.9 acres) subdivision, east of
Stevensville

We have reviewed the preliminary plat, topographic map and project overview for this proposed subdivision, and our comments follow.

This proposed subdivision is in the eastern foothills of the Sapphire Mountains, and numerous wooded draws and riparian areas associated with Iron Cap, North Fork Burnt Fork and Mill Creeks are nearby. (*North?* Burnt Fork Creek appears to be about 100 feet outside the southwest corner of this subdivision.) There is a good possibility of human/wildlife interactions at this location. In particular, wildlife such as white-tailed, coyote, fox, skunk and magpie could be found in the area, as well as occasional black bear and possible mountain lion. Numerous small mammal and bird species could be found nearby, as well as nesting birds. We recommend that "living with wildlife" issues be conveyed as a development covenant to residents in this subdivision, in order to help them deal with and avoid potential wildlife issues.

Attached is our recommended version of such covenants. Thank you for providing the opportunity for MFWP to comment on this subdivision.

Sincerely,

/s/ Mack Long SDR

Mack Long
Regional Supervisor

ML/sr

C: Ravalli County Planning Department, Attn: Kelli Zittergruen, 215 S. 4 St., Ste. F, Hamilton, MT 59840

Section __: Living with Wildlife

Homeowners must accept the responsibility of living with wildlife and must be responsible for protecting their vegetation from damage, confining their pets, and properly storing garbage, pet food, livestock feed and other potential attractants. Homeowners must be aware of potential problems associated with the presence of wildlife such as deer, elk, bear, mountain lion, coyote, fox, skunk, raccoon and magpie. Contact the Montana Fish, Wildlife & Parks office in Missoula (3201 Spurgin Road, Missoula, MT 59804) for brochures that can help homeowners "live with wildlife." Alternatively, see the Education portion of FWP's web site at www.fwp.mt.gov.

The following covenants are designed to help minimize problems that homeowners could have with wildlife, as well as helping homeowners protect themselves, their property and the wildlife that Montanans value.

1. There is high potential for **vegetation damage by wildlife, particularly from deer** feeding on green lawns, gardens, flowers, ornamental shrubs and trees in this subdivision. Homeowners should be aware of this potential damage. They should be prepared to take the responsibility to plant non-palatable vegetation or protect their vegetation (fencing, netting, repellents) in order to avoid problems. Homeowners should consider landscaping with native vegetation that is less likely to suffer extensive feeding damage by deer.
2. **Do not feed wildlife** or offer supplements (such as salt blocks), attractants, or bait for deer or other wildlife. Feeding wildlife results in unnatural concentrations of animals that could lead to overuse of vegetation and disease transmission. Such actions unnecessarily accustom wild animals to humans, which can be dangerous for both. It is against state law (MCA 87-3-130) to provide supplemental feed attractants if it results in a "concentration of game animals that may potentially contribute to the transmission of disease or that constitutes a threat to public safety." Also, homeowners must be aware that deer might occasionally attract mountain lions to the area.
3. **Pets** must be confined to the house, in a fenced yard, or in an outdoor kennel area, and not be allowed to roam as they can chase and kill big game and small birds and mammals. (This also helps protect pets from becoming prey for wildlife.) Under current state law it is illegal for dogs to chase hooved game animals and the owner may also be held guilty (MCA 87-3-124). **Pet food and livestock feed** should be stored indoors, in closed sheds or in animal-resistant containers in order to avoid attracting wildlife such as raccoons, bears, mountain lions, and skunks. **When feeding pets or livestock** do not leave food out overnight. Consider feeding pets indoors so that wild animals do not learn to associate food with your home.

4. **Garbage** should be stored in secure animal-resistant containers or indoors to avoid attracting wildlife such as bears. If stored indoors, do not set garbage cans out until the morning of garbage pickup.
5. **Barbecue grills** should be stored indoors. Keep all portions of the barbecues clean. Food spills and smells on and near the grill can attract bears and other wildlife.
6. Consider **boundary fencing** that is no higher than 3-1/2 feet (at the top rail or wire) and no lower than 18 inches (at the bottom rail or wire) in order to facilitate wildlife movement and help avoid animals such as deer becoming entangled in the fence or injuring themselves when trying to jump the fence.
7. **Gardens and fruit trees** can attract wildlife such as deer and bears. Keep the produce and fruit picked and off the ground, because rotting vegetable material can attract bears and skunks. To help keep wildlife such as deer out of gardens, fences should be 8 feet or taller. Netting over gardens can help deter birds from eating berries.
8. **Birdseed** is an attractant to bears. If used, bird feeders should: a) be suspended a minimum of 20 feet above ground level, b) be at least 4 feet from any support poles or points, and c) should be designed with a catch plate located below the feeder and fixed such that it collects the seed knocked off the feeder by feeding birds.
9. **Compost piles** can attract skunks and bears. If used they should be kept indoors or built to be wildlife-resistant.
10. **Apiaries (bee hives)** could attract bears in this area. If used, consult Montana Fish, Wildlife & Parks or the U.S. Fish & Wildlife Service for help in planning and constructing an apiary system that will help deter bears.

Superintendent
Dennis Kimzey
Ext. 138



Stevensville Public Schools

300 Park Avenue
Stevensville, MT 59870
Phone: 406-777-5481
Fax: 406-777-1381



Clerk/Business
Manager
Bill Schiele
Ext. 139

Tristan Riddel, Planner
Ravalli County Planning Department
215 South 4th Street, Suite F
Hamilton, MT 59840

RECEIVED

AUG 21 2006
1006-08-1323
Ravalli County Planning Dept.

August 17, 2006

Tristan,

Thank you for sending information on the 4-lot, 22.85 acre Roger Russ subdivision. Our Stevensville Public Schools can absorb the additional 4.5 youngsters, as well as provide school bus service. Please keep in mind our school district buses do not travel on roadways not maintained by Ravalli County or the State of Montana.

Sincerely Yours,

A handwritten signature in cursive script that reads "Dennis Kimzey".

Dennis Kimzey, Superintendent
Stevensville Public Schools

OCT 04 2005

Ravalli County Planning Dept.

FL-05-10-1835



Environmental Health
215 South 4th – Suite D
Hamilton, MT 59840
(406)375-6268 FAX (406)375-2048

MEMORANDUM

TO: Ravalli County Planning Department

FROM: Morgan T. Farrell, R.S., Environmental Health

DATE: 10-3-05

RE: Roger Runo Subdivision

The Ravalli County Environmental Health Department has received the above-referenced proposal for review. Based on the information provided, the application appears to be sufficient for subdivision review. The Sanitation in Subdivision review will be completed in accordance with the contract with the Department of Environmental Quality. Additional questions or comments may be required based upon the continued review of this file and the content of future submittals.

Tristan Riddell

From: David Ohnstad
Sent: Thursday, August 31, 2006 4:06 PM
To: Tristan Riddell
Cc: Renee Van Hoven
Subject: RE: Comments on Variance Request - Roger Russ

Regarding the Roger Russ Subdivision east of the Town of Stevensville, and with reference to the variance requesting access for one subdivision unit directly onto Middle Burnt Fork Road as opposed to an internal subdivision roadway accessing onto North Burnt Fork Road, the Road & Bridge Department does not recommend approval of this request, finding that -

- 1) The granting of this variance **may prove detrimental** to the public health, safety or general welfare or injurious to other adjoining properties. Middle Burnt Fork is functionally classified as a **Minor Collector** roadway with an **ADT of 1148**. North Burnt Fork Road is functionally classified as a **Minor Local Access** roadway with an **ADT of 435** (2003). Private roadways should access the county roadway with a lesser functional classification. In this situation, access onto Middle Burnt Fork Road, with nearly 3 times as much traffic as North Burnt Fork Road, may compromise public health and safety.
- 2) The conditions on which the request for variance is based **are not unique to this property**.
- 3) There are **no physical conditions which would prevent compliance** with the subdivision regulations.
- 4) -
- 5) -

DAVID H. OHNSTAD
COUNTY ROAD SUPERVISOR
RAVALLI COUNTY, MONTANA
(406) 363 - 2733

From: Tristan Riddell
Sent: Wednesday, August 16, 2006 4:41 PM
To: David Ohnstad
Subject: Comments on Variance Request - Roger Russ

David-

Attached please find the Preliminary plat and vicinity map for the Roger Russ subdivision as well as the Variance Application. Your comments and recommendations would be greatly appreciated. The Planning Board hearing is scheduled for 9/6/06.

Thanks,

Tristan Riddell
Ravalli County Planning Department
215 S. 4th St., Suite F
Hamilton, MT 59840
Phone (406) 375-6530
Fax (406) 375-6531
triddell@ravallicounty.mt.gov

9/1/2006